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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,846	09/05/2003	Charles R. Bamore	D-42694-02	7084

28236 7590 03/23/2005

CRYOVAC, INC.
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EXAMINER

TRAN, THAO T

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 03/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No. 10/655,846	Applicant(s) BAMORE ET AL.	
Examiner Thao T. Tran	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-58 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 40-58 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/5/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 40-58 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,667,082. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent contain the subject matter that is broader in scope than that of the instant claims, rendering them obvious over each other.

Claims 1-28 of the patent disclose all of the limitations recited in instant claims 40-58. However, claim 1 of the patent discloses (a) a first layer comprising an additive, a binder, and a crosslinking agent; and (b) a second layer; whereas instant claim 53 discloses a second binder in addition to the other components in the first layer. Thus, the scope of claim 1 of the patent encompasses that of instant claim 53, rendering them obvious over each other.

Claim 21 of the patent discloses (a) a first layer comprising an additive, a binder, a crosslinking agent; (b) a second layer; and (c) an overcoat layer (third layer). The first layer is

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between the overcoat layer and the second layer. Instant claim 40 discloses an additive in addition to other chemical components in the third layer. Thus, the scope of claim 21 of the patent overlaps that of instant claim 40, rendering them obvious over each other.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 40-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gribbin et al. (US Pat. 4,942,088) in view of Lundquist et al. (US Pat. 2,410,089).

Gribbin discloses a polyester film having an adhesion-promoting coating and a reprographic film coated on the surface of the adhesion-promoting layer. The adhesion-promoting layer comprises crosslinking-agent, such as maleic acid (dicarboxylic acid) and emulsifiers or protective colloids, and additives such as antioxidants. The reprographic film comprises resinous binder such as cellulose acetate and a crosslinking agent such as melamine formaldehyde (see abstract; col. 3, ln. 39-55; col. 5, ln. 15-26; col. 9, ln. 1-2, 41-57; Example 3).

Gribbin does not teach the specific protective colloids.

Lundquist teaches a coating composition comprising a protective colloid, such as gelatin or methyl cellulose to stabilize the dispersion (see col. 3, ln. 61-65). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have

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employed gelatin or cellulose, as taught by Lundquist, in the coating composition of Gribbin, for the purpose of enhancing stabilization of the adhesive composition.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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March 18, 2005


THAO T. TRAN
PATENT EXAMINER